IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6328 of 2007

Surekha Tukaram Kamble .. Petitioner

versus

State of Maharashtra & ors. .. Respondents

...

Ms.Ashwini H. i/b H.V. Chatuphale for the petitioner

Mr.R.D. Rane, G.P. for respondent no.1.

Ms.Suvarna Telgole for respondent no.2.

Mr.R.R. Salvi for respondent no.4.

CORAM : S.B. MHASE AND

D.G.KARNIK, JJ

DATED : 4th October 2007

P.C.:

. Heard learned counsel for the parties.

2. By this petition, petitioner seeks an order restraining respondent nos.3 and 4 from collecting the amount of penalty and also a direction to hand over the original documents without payment of penalty amount claimed.

3. Respondent nos.3 and 4 run a nursing school. The petitioner took admission in the said nursing school and executed a bond, copy of which is filed at page 46 of the petition. The bond states that the petitioner shall after completion of the course of 3.5 years be required to perform duties for a period of two years as per the agreement. The bond also says that in the event of failure to observe the terms of the agreement or in the event she leaves the course she would be liable to pay penalty as stipulated in the agreement. If the petitioner leaves the course before one year, shall be liable to pay Rs.15,000/- if she leaves before the completion of 3 years, she would be liable to pay 30,000/- and if she leaves after before 3 1/2 years, she would be liable to pay Rs.50,000/- as penalty.

4. The petitioner wants to leave the course and wants her documents back without payment of penalty. Whether amount stipulated to be paid as a penalty is in fact a penalty or liquidated damages is a disputed question of fact which is required to be decided on appreciation of evidence. Whether the petitioner is entitled to the refund of the documents and on failure to comply with the conditions of the bond and

the bond is not binding on her, is also disputed question of fact which can be decided only in a trial in a suit. This issue cannot be decided in a Writ Petition.

5. In the circumstances, we cannot entertain a Writ Petition. Writ Petition is accordingly rejected with liberty to the petitioner to pursue her remedy by way of a suit.

(D.G. KARNIK, J) (S.B. MHASE, J)